

General Information Letter: Information provided by taxpayer is insufficient to support a determination that no bulk sale report is required.

August 16, 2002

Dear:

This is in response to your letter dated August 12, 2002, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL. In your letter you state as follows:

I am requesting a written determination that the following real estate transaction is exempt from the provisions of Section 902(d) of the Illinois Income Tax Act and the companion provisions of the Illinois Retailers Occupation Tax Act.:

COMPANY1 to COMPANY2 of real estate consisting of XXX acres commonly known as STREET property, CITY, Illinois, ZIPCODE and located within the city of CITY in TOWNSHIP, Section XX of Township XX North, Range X East, COUNTY, Illinois.

In general, section 902(d) of the Illinois Income Tax Act (IITA) (copy enclosed) requires withholding of tax from the consideration rendered in the sale or transfer of "the major part" of certain specified assets "outside the usual course of business". The purpose of IITA Section 902(d) is to prevent the seller or transferor from liquidating assets and absconding with the proceeds without satisfying outstanding Illinois income tax obligations. The penalty for failure to effectuate bulk sales withholding when required results in a shifting of liability for amounts owed but unpaid by the seller/transferor to the purchaser or transferee up to the value of consideration received.

Any ruling issued by the Department as to the applicability or not to a particular transaction of bulk sales withholding is, as you might imagine, extremely fact-dependent. Your brief correspondence contains insufficient facts in order for the Department to make a meaningful ruling as requested. For example, there is no information regarding the parties to this transaction which would disclose whether the seller/transferor is engaged in a business. Likewise, there are no facts present that would indicate whether the acreage involved relates to a business engaged in by the seller/transferor, let alone whether that acreage comprises "the major part" its real estate assets. Therefore, we must decline to issue the ruling you have requested at this time.

If you wish to re-submit a request for a ruling containing detailed facts along the lines of those mentioned above, the Department will consider making a ruling at that time. Meanwhile, for your general guidance, please find enclosed a copy of an article written by the undersigned a few years back which discusses various aspects of bulk sales withholding.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax